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woman may be pregnant,²³ and it seems but a logical sequence to make him liable for acts or neglect which might reasonably be expected to injure a child *en ventre sa mere*.

In view of the recognition in other branches of the law of the rights of the unborn child, it is surely logical as well as practical to hold that an infant, injured when it could have been born viable, may, after birth, have an action for injuries to itself as well as to its property.

J. E. H.

JURISDICTION IN DIVORCE—FULL FAITH AND CREDIT AS REGARDS
A PRIOR SUIT.

A man who with his wife had been domiciled in Massachusetts left her, moved to Georgia, and there having obtained a domicile secured a divorce. The wife had no actual notice of the suit instituted by the husband, though there was publication of notice as required by the Georgia law. Later the wife brought suit for divorce in Massachusetts and a decree was given in her favor.¹ The court held that the husband had unjustifiably deserted his wife, that the matrimonial domicile remained in Massachusetts, and that the Georgia decree would not be recognized.

The court refused to recognize the Georgia decision since it was not compelled to, for the case of *Haddock v. Haddock*² had decided that a decree of divorce not given in the actual domicile of the parties was not protected by the full faith and credit clause of the Federal Constitution unless both parties were before the court and the court had jurisdiction of the subject-matter. The Massachusetts court also refused even on the ground of comity to respect the Georgia decree.

Having rejected the decision of the Georgia court, the Massachusetts tribunal, citing the case of *Atherton v. Atherton*³ as an authority, held that it had power to grant a divorce in a suit by the wife in the matrimonial domicile. In fact neither one of the cases cited by the court is conclusive authority upon this point, for in both of them⁴ it was the husband who sued in the matri-

²³ *West v. Railroad* (1904) 187 Md. 363.

¹ *Perkins v. Perkins* (1916) 113 N. E. (Mass.) 841.

² (1905) 201 U. S. 526. Brown, Brewer, Harlan, and Holmes, JJ., dissenting.

³ (1900) 181 U. S. 155. Fuller and Peckham, JJ., dissenting.

⁴ *Atherton v. Atherton*, *supra*; *Thompson v. Thompson* (1912) 226 U. S. 551.

monial domicil for a divorce. The present case has not the benefit of the rule that a wife's domicil follows that of her husband. The principal case is not one in which the *lex fori* is that of the domicil of both parties, as was the situation in both of the cases cited above.

A divorce proceeding is not one *in personam*, nor yet one *in rem*. It is *sui generis*—very much like an attachment proceeding, which latter has aptly been called a proceeding *quasi in rem*.⁵ The *res*, if we may speak of it as such in a divorce case, is the marriage status.⁶ As, in general, a decree *in personam* is not valid unless the defendant is before the court or has been actually served with process,⁷ so a decree *in rem* is likewise of no effect if the court has no jurisdiction of the *res*.

The Massachusetts court in refusing to admit that Georgia had jurisdiction of the cause, laid great stress upon the fact that the wife was not actually served with process and could not be present at the proceeding. The court in the principal case seeks to reconcile its decision with *Gildersleeve v. Gildersleeve*⁸ and with *Joyner v. Joyner*⁹ on the ground that in those cases the defendant had knowledge of the proceedings whereas in the present case this was not so.

If, however, Georgia had jurisdiction of the marriage status, it would seem that in the present case the court should have respected the findings of the former court on the merits of the case, namely as to which party was in fault.

F. L. McC.

AVOIDANCE OF THE FORFEITURE OF AN INSURANCE POLICY CONTAINING THE "VACANCY CLAUSE" BY REOCCUPATION
BEFORE LOSS.

In the case of *Beecher v. Vermont Mut. Fire Ins. Co.*¹ the policy contained a provision that it should be *void*, if the property insured should be unoccupied for a period of ten days without the

⁵ Minor, *Conflict of Laws*, 194; *Doughty v. Doughty* (1876) 27 N. J. Eq. 315.

⁶ *Status* in its final analysis seems to consist merely of a complex set of jural relations (a) as between the spouses, and (b) as between either spouse and all other persons.

⁷ *Pennoyer v. Neff* (1877) 95 U. S. 714.

⁸ (1914) 88 Conn. 689.

⁹ (1908) 131 Ga. 217.

¹ (1916) 98 Atl. (Vt.) 917.